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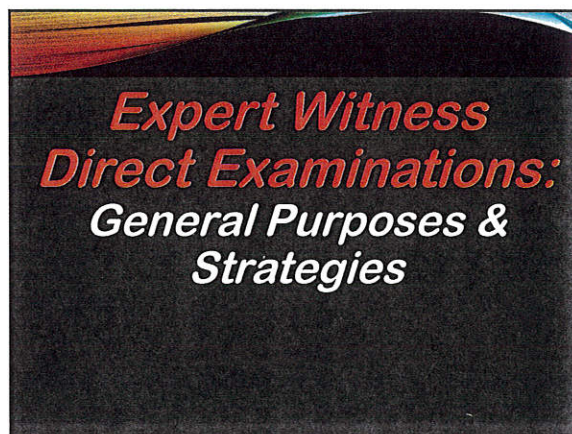
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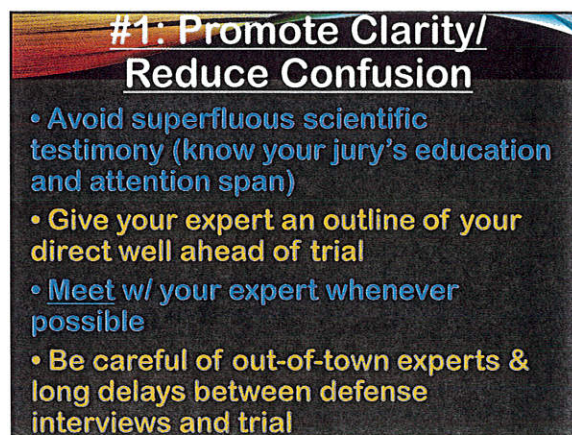
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## #2: Establish Trust w/ Jury

- Competence
- Credibility (willing to concede harmful facts; not argumentative w/ defense)
- Consistent demeanor on direct and cross-exam

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## #3: Consistency w/ Theme & Theory

- Focus and reiterate specific issues in dispute
- Minimize areas not in dispute

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## *Expert Witness Direct Examinations: Testimony Mechanics*

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### #1: Use **Outlines** Instead of **Scripts**

- Outlines promote (your) active listening
- Expert (just as w/ lay) witness testimony needs to be as conversational as possible
- Scripts tend to impede active listening and conversational flow

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### #2: Education & Experience

- Elicit only what you need (jurors typically not impressed by lists of committee memberships, guest lectures, etc.)
- Tailor questions on experience/education to the critical aspects of testimony (remember theme and theory)

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### #3: Expertise/Testing Basics

- Educate jury so they understand the critical aspects/evidence (don't overdo it)
- Use visuals where possible

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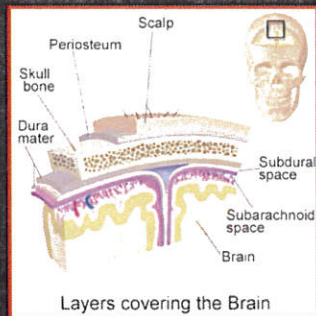
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### #3: Expertise/Testing Basics



Layers covering the Brain

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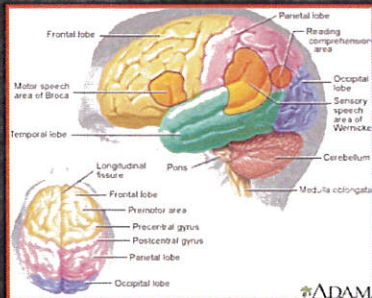
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### #3: Expertise/Testing Basics




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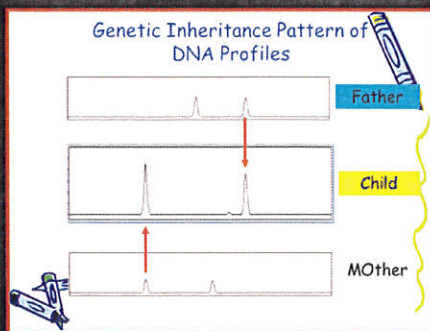
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### #3: Expertise/Testing Basics




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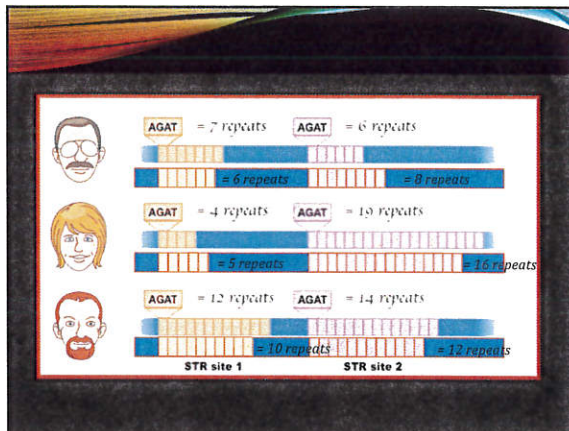
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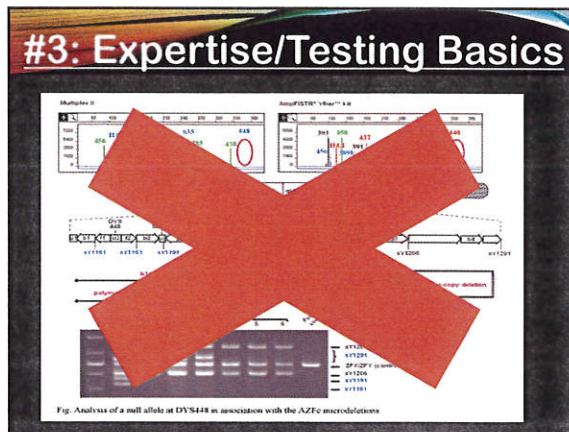
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### #4: Quality Assurance

- Do NOT cut this short
- Emphasize:
  - positive and negative controls;
  - independent reviews of results;
  - laboratory accreditations
  - analyst proficiency testing
  - use of procedures by other labs (FBI, etc.)

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### #5: Results/Opinions

- Chain of Custody (use exhibits to demonstrate procedures, tracking, etc.)
- Use models and exhibits whenever practical (bullet models for ballistics; allele charts for DNA; photos and injury diagrams for OMEs; etc.)
- Use aspects of 3-pass method to highlight previous testimony and evidence

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### First Degree (Felony) Murder

Kidnapping (course/furtherance)




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### First Degree (Felony) Murder

Kidnapping (course/furtherance)




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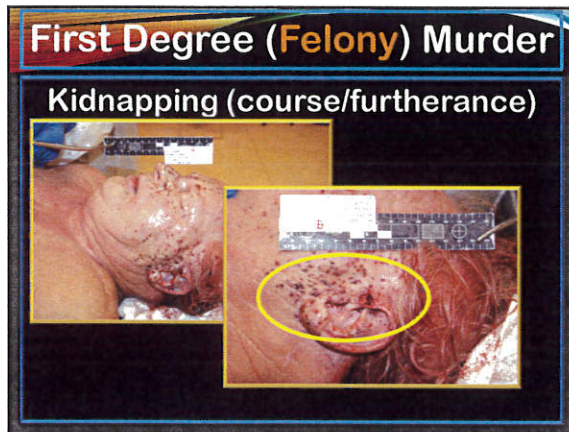
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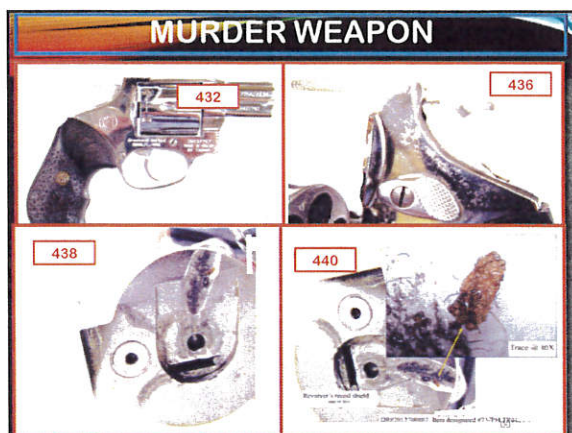
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DNA FROM MURDER WEAPON						
Locus	R.73-194 TR01 (Amp-1)	R.73-194 TR01 (Amp-2)	R.73-194 TR01 (Amp-3)	Thomas Saloja (169-194)	Darren Craig (209)	John Murrell (91-234)
D8S1179	12, 13, INC	12, 13, INC	12, 13, INC	12, 13	13, 14	10, 13
D21S11	[28], 29, 31.2	[29, 31.2], INC	[29, 31.2], INC	29, 31.2	30, 32.2	30, 32.2
DS7S820	[10, 11]	[10, 11]	[10, 11]	10, 11	8, 11	9, 11
CSF1PO	12, INC	[12], INC	12, INC	12, 12	10, 13	10, 11
D3S1358	14, 17, INC	14, 17, INC	14, 17, INC	14, 17	16, 18	18, 18
TH01	7, 9.3	[6], 7, 9.3	7, 9.3	7, 9.3	6, 10	6, 7
D13S317	8, [11]	8, [11]	8, INC	8, 8	12, 13	11, 12
D16S539	11, [13]	11, [13]	11, [13]	11, 13	11, 11	11, 12
D2S1338	[19, 27], INC	[19], INC	[19, 27], INC	19, 27	19, 19	17, 20
D19S433	13, 14, INC	13, [14]	13, [14]	13, 14	14, 15.2	13, 14
VWA	16, 17, INC	[14, 16, 17]	16, [17], INC	16, 17	14, 16	14, 19
TPOX	[8, 9, 11]	[9, 11], INC	[9, 11]	9, 11	8, 11	8, 8
D18S51	[11, 12]	[11, 12], INC	[11, 12], INC	11, 12	17, 19	14, 16
DS8S18	12, 12	[11], 12	12	12, 12	11, 11	10, 12
FGA	21, INC	[21], INC	21	21, 21	21, 24	20, 25
Amel	X, Y	X, [Y]	[X, Y]	X, Y	X, Y	X, Y

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DNA FROM MURDER WEAPON						
Locus	R.73-194 TR01 (Amp-1)	R.73-194 TR01 (Amp-2)	R.73-194 TR01 (Amp-3)	Thomas Saloja	Darren Craig	John Murrell
D8S1179	12, 13, INC	12, 13, INC	12, 13, INC	12, 13	13, 14	10, 13
D21S11	[28], 29, 31.2	[29, 31.2], INC	[29, 31.2], INC	29, 31.2	30, 32.2	30, 32.2
DS7S820	[10, 11]	[10, 11]	[10, 11]	10, 11	8, 11	9, 11
CSF1PO	12, INC	[12], INC	12, INC	12, 12	10, 13	10, 11
D3S1358	14, 17, INC	14, 17, INC	14, 17, INC	14, 17	16, 18	18, 18
TH01	7, 9.3	[6], 7, 9.3	7, 9.3	7, 9.3	6, 10	6, 7
D13S317	8, [11]	8, [11]	8, INC	8, 8	12, 13	11, 12
D16S539	11, [13]	11, [13]	11, [13]	11, 13	11, 11	11, 12
D2S1338	[19, 27], INC	[19], INC	[19, 27], INC	19, 27	18, 19	17, 20
D19S433	13, 14, INC	13, [14]	13, [14]	13, 14	14, 15.2	13, 14
VWA	16, 17, INC	[14, 16, 17]	16, [17], INC	16, 17	14, 16	14, 19
TPOX	[8, 9, 11]	[9, 11], INC	[9, 11]	9, 11	8, 11	8, 8
D18S51	[11, 12]	[11, 12], INC	[11, 12], INC	11, 12	17, 19	14, 16
DS8S18	12, 12	[11], 12	12	12, 12	11, 11	10, 12
FGA	21, INC	[21], INC	21	21, 21	21, 24	20, 25
Amel	X, Y	X, [Y]	[X, Y]	X, Y	X, Y	X, Y

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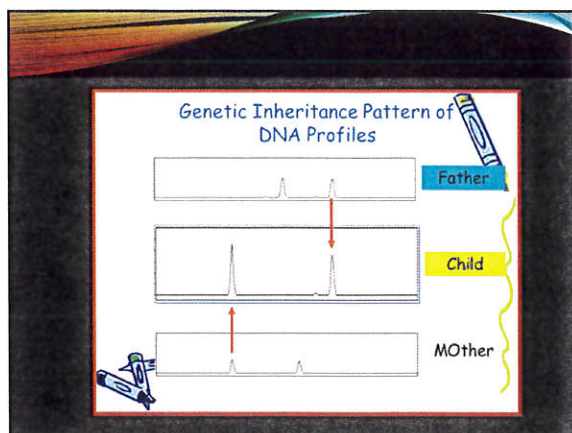
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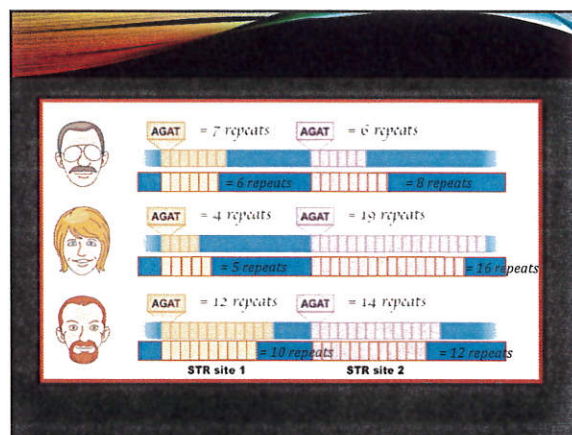
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## #5: Results/Opinions

- Emphasize independent reviews to bolster results
- If defense challenges accuracy/integrity of evidence or results, elicit testimony that evidence available for defense testing
- Be careful of using academic studies

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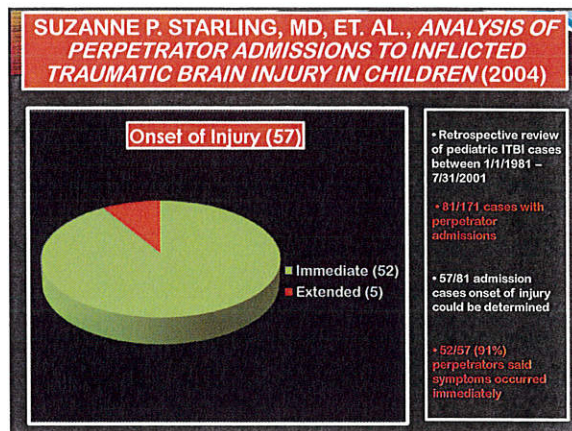
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### #5: Results/Opinions

- Highlight any expert testimony your witness has done for **defense**, even almost always called by State (anything is helpful as long as they're willing to testify for defense)
- Have your expert sit in to watch defense expert testify if possible (get court pre-approval) or at least review defense expert reports/opinions

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### ***DNA Evidence:*** ***Case Evaluation***

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## Evaluating DNA Results

Examine DNA results in context w/ all other evidence

How do the DNA results fit with your case theory?

Use DNA results in your trial strategy decisions (additional witnesses, additional evidence, witness list, etc.)

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## Evaluating DNA Results

**Example #1:**  
Cold case  
murder/sexual assault  
(the “easy” DNA case)

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## The “easy” DNA case

1) Single-source profile

2) No *legitimate*, alternative explanation for the presence of the profile

3) No *legitimate* issues of scene or laboratory contamination

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## The “easy” DNA case

**Example:** *State v. Gregory Tamplin*

- **Offense date:** 11/13/90
- **Summary:** Black male, mid-20s, braids, forced his way into Vs’ apartment, shot and killed male victim and raped female. Female V called 911, taken to hospital for sex assault exam. Female V did not know attacker.

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## The “easy” DNA case

**Example:** *State v. Gregory Tamplin*

- Swabs taken during exam, semen noted. (*DNA testing in infancy*)
- Hunt for suspect ends by Jan. 1991

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## The “easy” DNA case

**Example:** *State v. Gregory Tamplin*

1996—Gregory Tamplin forces his way into another apartment w/ an accomplice. Tamplin attempts to rape the sole female occupant at gunpoint. Victim fights back and Tamplin and accomplice forced to flee. Victim notes license plate of car and both men captured and arrested.

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## The “easy” DNA case

1998—Tamplin convicted of 1996 incident and sent to prison (release date 2017)

2002—Tamplin files a motion for post-conviction relief; demands DNA testing from 1996 incident.

Surprise!!: Semen from victim's sweatpants matches Tamplin.

**\*\*Tamplin's DNA loaded onto CODIS\*\***

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## The “easy” DNA case

2007—TPD cold case detectives begin reviewing 1990 case. In collaboration w/ PCAO's cold case unit, blood and semen stains sent in for DNA testing.

July 2007—TPD crime lab receives **CODIS match** to Tamplin for blood and semen stains from **1990 case**.

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## The “easy” DNA case

Dec. 2007—PCAO indicts Tamplin on first degree murder, sexual assault, etc.

July 2009—Jury convicts Tamplin on all charges

Aug. 2009—Judge Lee sentences Tamplin to 39 years—new release date is 2056 (91 y.o.)

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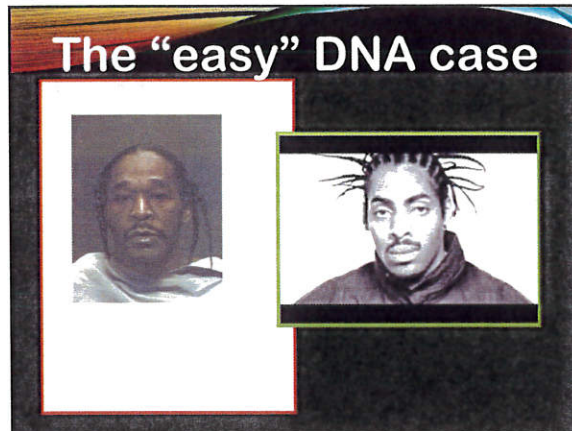
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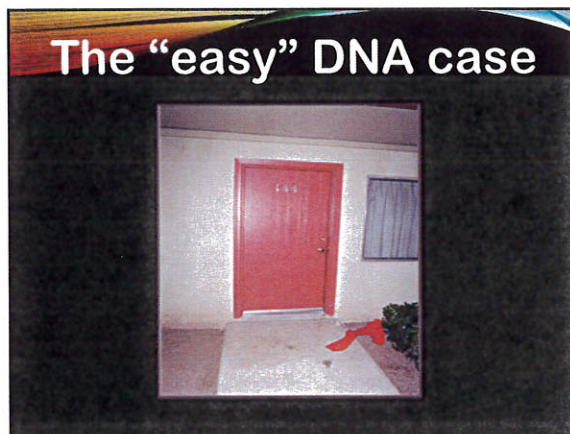
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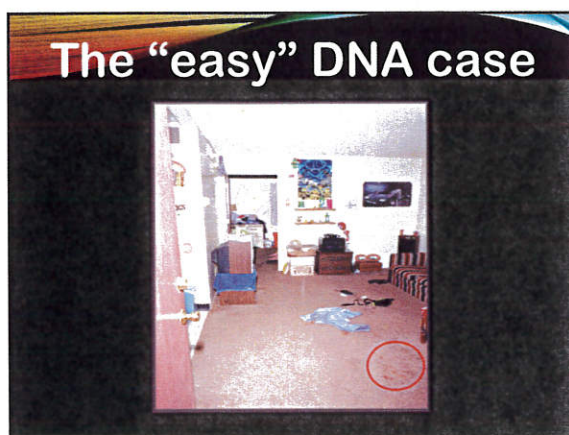
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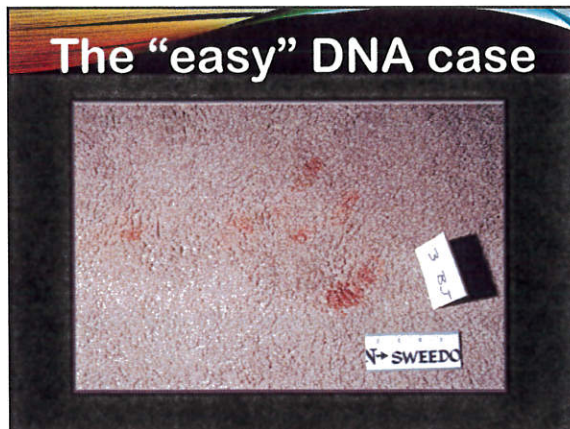
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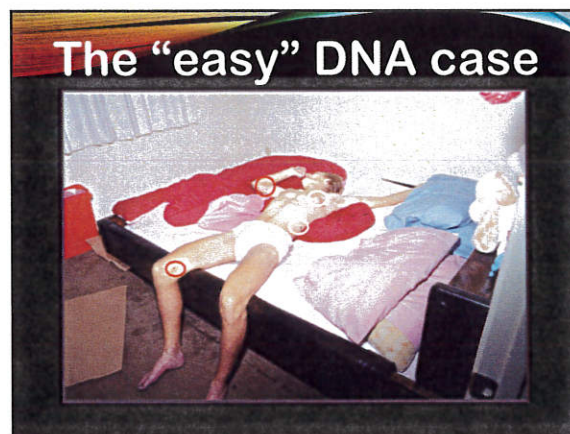
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### The "easy" DNA case

Locus	Victim (1F-1)	Female Victim (2F-2)	Male Victim (3M-3)	Sex KB Swabs (1MM-4SP)	Carpet Stain (3B-1-8)	Yellow Robe Stain (2MR-1 SP)
D3S1358	16, 16	16, 17	14, 15	16, 16	16, 16	(14, 15), 16
vWA	16, 16	16, 16	16, 18	16, 16	16, 16	16, (18)
FGA	19, 25	21, 21	21, 22	19, 25	19, 25	19, (21, 22), 25
Amel.	X, Y	X, X	X, Y	X, Y	X, Y	X, Y
D8S1179	15, 16	14, 14	11, 15	15, 16	15, 16	(11), 15, 16
D21S11	31, 32	30, 32.2	28, 29	31, 32	31, 32	(28, 29), 31, 32
D18S51	12, 14	16, 19	16, 16	12, 16	12, 16	12, 16
D5S818	11, 11	11, 11	11, 11	11, 11	11, 11	11, 11
D13S317	13, 13	10, 11	12, 13	13, 13	13, 13	(12), 13
D7S820	10, 12	8, 12	10, 10	10, 12	10, 12	10, 12
D16S539	11, 11	11, 12	9, 9	11, 11	11, 11	(9), 11
TH01	7, 9	6, 6	7, 9.3	7, 9	7, 9	7, 9, (9.3)
TPOX	8, 8	11, 11	8, 11	8, 8	8, 8	8, (11)
CSF1PO	12, 12	12, 12	11, 12	12, 12	12, 12	(11), 12

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**Why many DNA cases are NOT “easy”:**

- 1) NOT because defense attorneys are better educated about DNA (although some are)
- 2) NOT because defense experts are better able to convince jurors to distrust DNA evidence (contamination, statistics, etc.)
- 3) NOT even because of the “CSI Effect”

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**Why many DNA cases are NOT “easy”:**

**Reason #1): Alternative explanations for DNA (or DNA not dispositive):**

- a) D claims sex was consensual;
- b) D resided at residence prior to murder;
- c) \*\*\* D points finger at co-defendant

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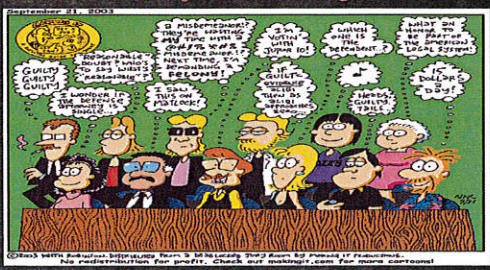
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**Why many DNA cases are NOT “easy”:**

**Reason #2): JURORS are NOT the masters of analytical thinking:**



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## Why many DNA cases are NOT “easy”:

Reason #3): JUDGES have their own agendas:



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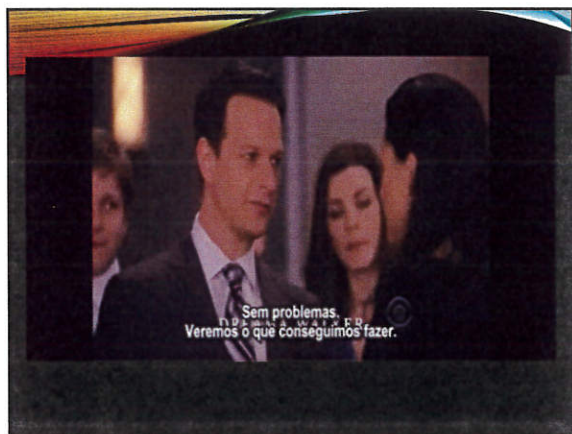
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## Evaluating DNA Results

**Example #2:**  
Co-defendant murder

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**Example #2: *State v. Max Paredes and Brian Stewart***




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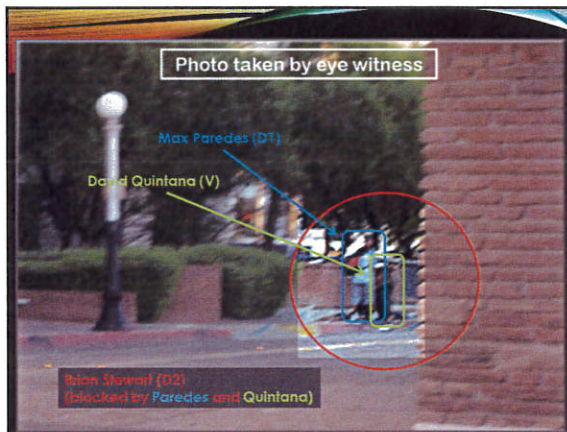
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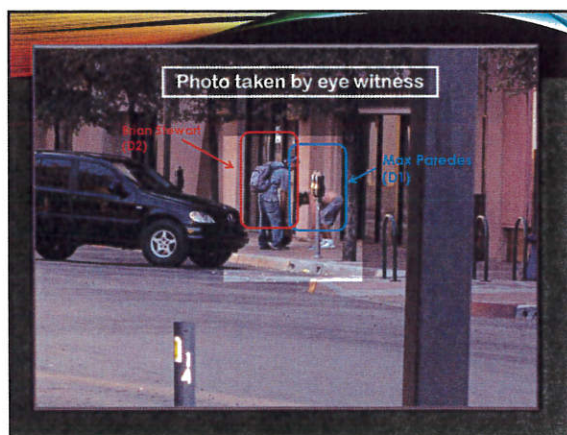
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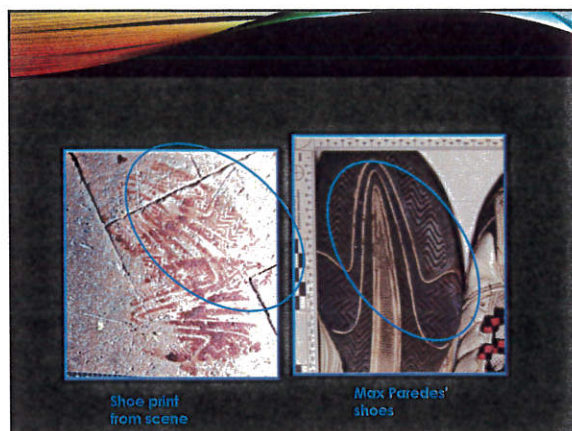
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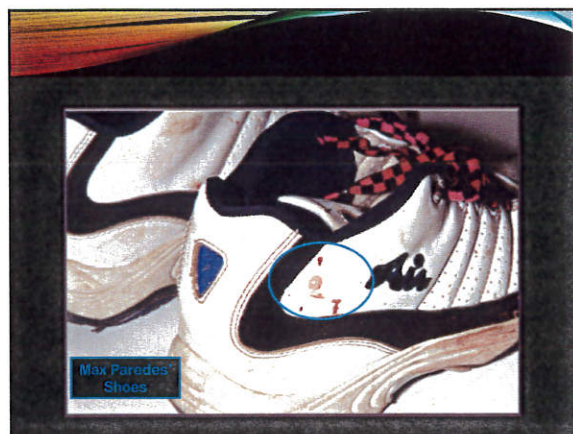
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Locus	Brian Stewart (1911)	Max Paredes (1911)	Dyvid Quintana (UME 1-3)	Kalte (BIS-2: blade edge)	Max Paredes' Shoes (IMP-1 and IMP-2)	Headphones (10B-1: capless and frame)
D3S1358	17, 18	14, 15	15, 16	15, 16 (17, 18)	15, 16	14, 15, 16, 17, 18
vWA	16, 16	17, 18	14, 16	14, 16	14, 16	14, 15, 16, 17, 18
FGA	22, 23	23, 23	22, 24	22, 24	22, 24	22, 24
Amel.	X, Y	X, Y	X, Y	X, Y	X, Y	X, Y
D8S1179	10, 14	13, 14	12, 13	(10), 12, 13, (14)	12, 13	10, 12, 13, 14, 15
D21S11	30, 31, 2	30, 31, 2	30, 30	30, 30	30, 30	30, 31
D18S51	16, 21	13, 15	16, 19	16, 19	16, 19	16, 19
D5S818	11, 12	7, 13	11, 12	11, 12	11, 12	11, 12
D13S317	10, 11	9, 10	11, 12	11, 12	11, 12	10, 11, 12, 13
D7S820	10, 10	11, 11	10, 12	10, 12	10, 12	10, 12
D16S539	10, 11	11, 11	12, 12	12, 12	12, 12	11, 12
TD01	7, 9, 3	7, 7	6, 7	6, 7 (9, 3)	6, 7	6, 7, 9, 3
TPOX	11, 11	8, 9	8, 11	8, 11	8, 11	8, 11
CSF1PO	10, 11	10, 12	9, 10	9, 10	9, 10	9, 10

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Locus	Brian Stewart (IWH)	Max Paredes (IWH)	David Quintana (IWE 1-8)	Knife (OBS-2: blade edge)	Max Paredes's Shoes (IMP-1 and IMP-2)	Headphones (IOWS-4: earpieces and frame)
D3S1358	17, 18	14, 15	15, 16	15, 16 (17, 18)	15, 16	14, 15, 16, 17, 18
vWA	16, 16	17, 18	14, 16	14, 16	14, 16	14, 15, 16, 17, 18
FGA	22, 23	23, 23	22, 24	22, 24	22, 24	22, 24
Amel	X, Y	X, Y	X, Y	X, Y	X, Y	X, Y
D8S1179	10, 14	13, 14	12, 13	(10), 12, 13, (14)	12, 13	10, 12, 13, 14, 15
D11S11	30, 31.2	30.2, 31.2	30, 30	30, 30	30, 30	30, 31
D18S51	16, 21	15, 15	16, 18	16, 18	16, 18	16, 18
D8S18	11, 12	7, 13	11, 12	11, 12	11, 12	11, 12
D13S17	10, 11	9, 10	11, 12	11, 12	11, 12	10, 11, 12, 13
D7S820	10, 10	11, 11	10, 12	10, 12	10, 12	10, 12
D16S39	10, 11	11, 11	12, 12	12, 12	12, 12	11, 12
TH01	7, 9.3	7, 7	6, 7	6, 7, (9.3)	6, 7	6, 7, 9.3
TPOX	11, 11	8, 9	8, 11	8, 11	8, 11	8, 11
CSF1PO	10, 11	10, 12	9, 10	9, 10	9, 10	9, 10

Max Paredes: "I didn't fight anyone—he (Brian Stewart) did. . . . I was just standing there. . . . I tried to pull Brian away, but he was drunk and crazy."

Brian Stewart: "I'm homicidal, suicidal, and psychotic." (and he had the murder weapon in his pocket when arrested)

Eye Witness (photos): Ran to victim after Paredes and Stewart were out of sight. Witness calls 911 and tells operator that victim told him "THEY stabbed me."

At first Paredes trial, Court refused to allow eye witness to testify as to V's statement (despite clear indications it was present sense impression)



**PRELIMINARY RESULT:** Hung Jury (10-2 for NOT guilty) on Max Paredes at his first trial (severed trial from Stewart) despite his footprints in V's blood, V's DNA on his shoes, and photo of him involved in attack on V.

Impact of DNA evidence on Paredes diluted by Court and Stewart's bizarre behavior—CONFUSION helped Paredes

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**END RESULT #1:** Stewart convicted of Second Degree Murder

**END RESULT #2:** Paredes convicted of Second Degree Murder at re-trial (convinced Court to allow eye witness to testify to V's statement that "THEY stabbed me" + other presentation improvements)

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## Evaluating DNA Results

**Example #3:**  
Stranger sexual assault

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**A man assaulted me. He took me to the Casa Grande desert.**  
press or anything he got in the car and left. I called 9-11. He penetrated me while my back was facing him. I don't know if he

**He kissed my neck and breast. I**

**He was kissing me all over my face.**

Did the assailant(s) wear a condom? ☐ No ☐ Not Known ☒ Yes

**He put his tongue in one of my ears,**

**He made me perform oral sex with a condom.**

Examiner's Signature: *[Signature]* Title: RN

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**He penetrated me while my back was facing him.**  
would use force to control my hands. I kept telling him No, No, he told me to shut my mouth then he would cover my mouth. He was saying alot of things. If I scream or run away he was going to keep my things and something was gonna happen to me if I stayed there by myself. he didn't speak much spanish.

**He used force for everything.**

Was there oral-genital contact? ☒ Fellatio ☐ Cunnilingus ☐ Anilingus ☐ Not Known ☐ No

**I kept telling him No, No. He told me to shut my mouth**

Mark's, scars, tattoos, piercings, size, shaved, circumsized?

Was there any use of force? ☐ No ☒ Yes Describe: see history

Was there any use of threats? ☐ No ☒ Yes Describe: see history

Was there any use of intimidation? ☐ No ☒ Yes Describe: see history

Was a weapon used? ☐ No ☒ Yes Describe: see history

Number of assailant(s): 1 Sex of assailant(s): male Ethnicity of assailant(s): puertorican/cuban

Does patient know assailant(s)? ☒ No ☐ Yes, if yes, how? *left no marks*

Examiner's Signature: *[Signature]* Title: RN

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**DATE OF ASSAULT: (mm/dd/yy) 02/17/13**  
**TIME OF ASSAULT: (24 hour clock) approx 1800-1900**

**DATE OF EXAM: (mm/dd/yy) 02/17/13**  
**TIME OF EXAM: (24 hour clock) 2310**

**EVIDENCE COLLECTION AND SEALING: TO BE COMPLETED BY EXAMINING PHYSICIAN OR NURSE**

**Prior to exam/evidence collection has the patient:**

☒ Urinated ☐ Showered ☐ Wiped/washed

☐ Defecated ☐ Bathed ☐ Changed clothes

☐ Douched ☐ Brushed teeth / used mouthwash / flossed (circle)

☐ Vomited ☒ Had food / drank / chewed gum (circle)  
*chewed gum*

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the evidence and the Laboratory Analysis Request Form.

☒ **Step 4 - Body Surface Swabs (site:)**  
left/right breast; left/right neck

☒ **Step 5 - Body Surface Swabs (site:)**  
Left/right cheek; circumoral, posterior

☒ **Step 8 - External Genital Swabs**

☒ **Step 9 - Vaginal Swabs**

☒ **Step 10 - Vaginal Aspirate**

☐ **Step 1 - Debris Collection (describe)** ☐ **Step 6 - Anal Swabs** 2 pairs of pants  
☐ **Step 7 - Pubic Hair Combing** 1 grade

☒ **Step 11 - Blood:** ☒ purple ☐ gray

☒ **Step 12 - Underpants or Diaper**

☒ **Step 13 - Bra or Other:**

Left/right cheek, circumoral, posterior ☒ **Step 13 - Bra or Other** ☒ **Urine Collected (if indicated)**

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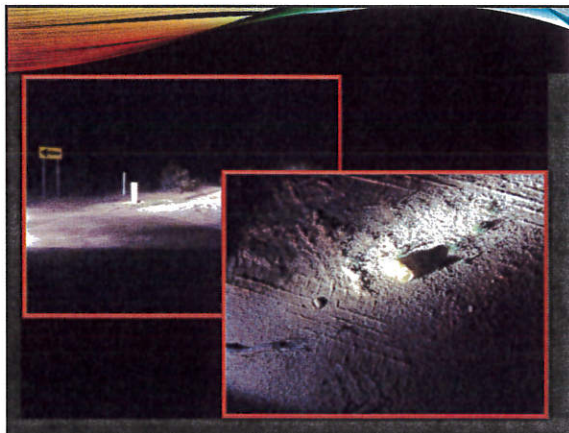
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### What Evidence to Test for DNA?

- ☒ Step 4 - Body Surface Swabs (site:)  
left/right breast: left/right neck
- ☒ Step 5 - Body Surface Swabs (site:)  
Left/right cheek: circumoral, posterior
- ☒ Step 8 - External Genital Swabs
- ☒ Step 9 - Vaginal Swabs
- ☒ Step 10 - Vaginal Aspirate
- ☒ Step 11 - Blood: ☒ purple ☐ gray
- ☒ Step 12 - Underpants or Diaper
- ☒ Step 13 - Bra or Other:

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### What Evidence to Test for DNA?

**What if Defendant admitted to sex, but claimed consensual?**

**What if there was a second victim (2 weeks earlier)?**

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### What Evidence to Test for DNA ?

Defense can perform independent testing (if not consumed)

- Burden shifting? NO, not if D/C attacks accuracy/sufficiency of evidence *State v. McDougall*, 153 Ariz. 157 (1987)
- Call expert to explain why items NOT tested

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## *Common Sources of DNA Evidence*

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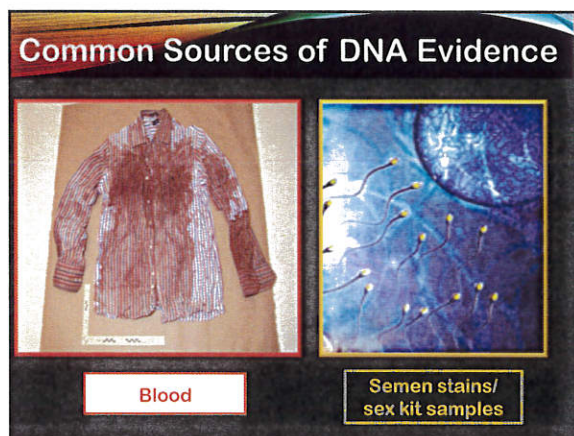
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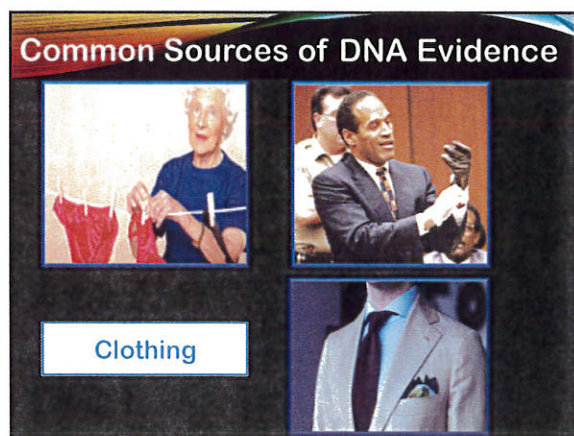
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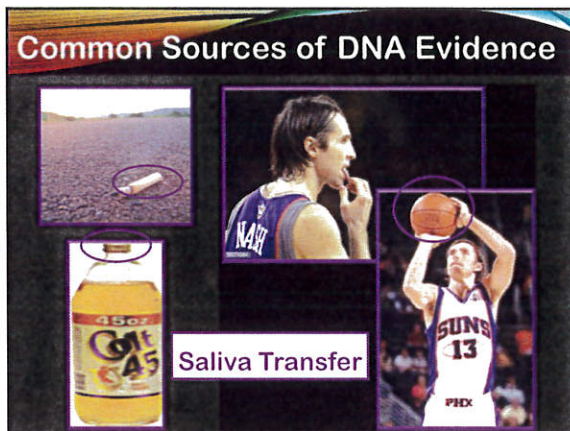
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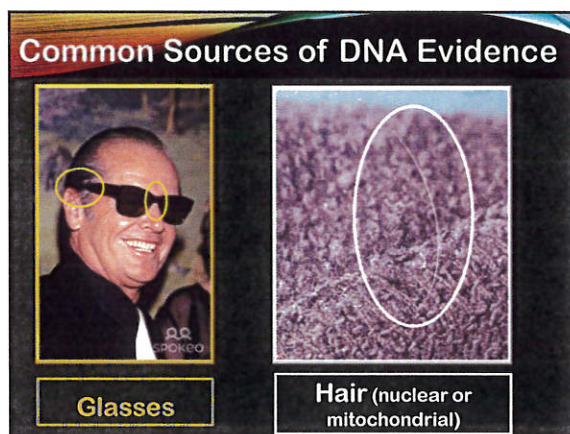
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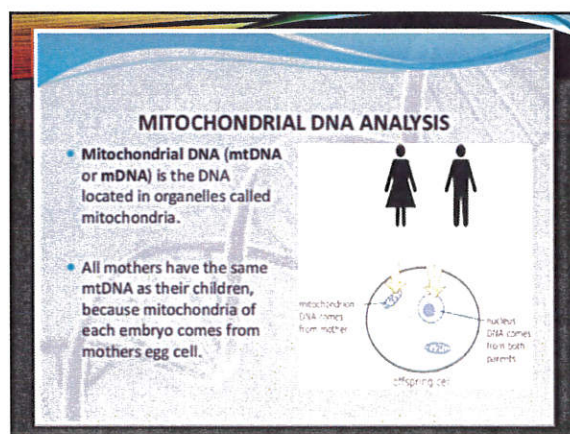
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## Y-STR Testing

- Used primarily in sex assault cases where female V DNA concentration >> than male DNA.
- Tests locations only on Y-chromosome
- Not as discriminatory as STR b/c Y-STR profiles inherited paternally

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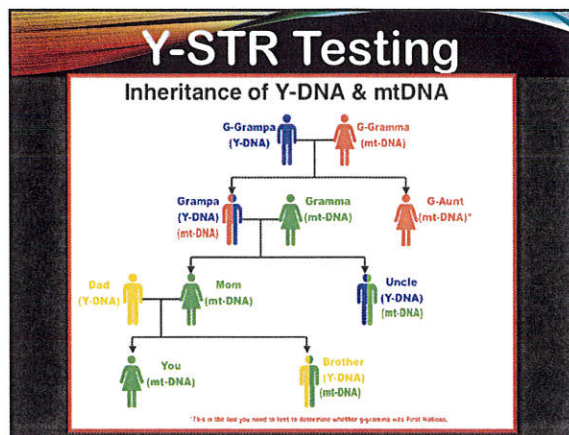
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## EXPERT WITNESSES: Direct Examination & DNA Trial Evaluation

**Shawn Jensvold**  
Pinal County Attorney's Office

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